vides that if an elector defaces three ballots by accident or honest mistake, the judge shall deliver to him another ballot and help him mark it. And § 13294, provides that an election official who misleads an illiterate or blind voter, or an elector who is unable to prepare his ballot, or prepares a ballot for such an elector otherwise than as directed by him shall be fined. The court has never had occasion to determine whether or not under these sections of the statute an illiterate can be lawfully assisted by the election officers. But in *Wickham* v. *Coyner*, 30 Ohio Cir. Ct. Rep. 765, the court said in reference to § 5078 of the Code, "We are of the opinion that if the case required it we would hold that the direction that the judges should not render assistance to voters other than those afflicted with physical infirmities, is a limitation upon the right of the elector to cast his ballot and not warranted by the constitution." And in *Common Council* v. *Rush*, 82 Mich. 532, it was held in the absence of an express provision for assistance to illiterate voters in marking their ballot the right exists by implication.

On the other hand, the court of Tennessee in construing a similar statute, held in *Moore* v *Sharp*, 98 Tenn. 491, 41 S. W. 587, that the statute did not extend to include illiterate voters, saying, "The fact that a man can neither read nor write does not necessarily disqualify him from marking his ballot." There are three interpretations open to the court to adopt,—the Tennessee rule, that of *Wickham* v. *Coyner, supra,* or to declare that illiterates are included within the statute. In order to bring the principal case in line with the weight of authority, one of the last two named interpretations must be placed upon the statutes, otherwise the legislature in providing for the non partisan ballot, irrespective of the merits of the law, clearly overstepped its constitutional limitations according to the weight of authority. As was stated by Chief Justice DAVIS in the principal case in his dissenting opinion, "It may or may not be desirable to eliminate this class of voters, but the constitution does not disqualify them, and it is clearly not within the power of the legislature to do so." S. H. M.

THE RIGHT OF A MUTUAL BENEFIT ASSOCIATION TO INCREASE THE RATE OF ASSESSMENT UNDER A GENERAL POWER TO AMEND ITS CONSTITUTION AND BY-LAWS.—The courts agree in general that a reservation of power to amend the by-laws and constitution gives an association the right to make such amendments as will not impair the vested rights of its members. A conflict, however, arises among the authorities when they come to determine whether or not a vested right of the members has been impaired. Some courts hold that where an association reserves the general power to amend the by-laws and constitution, and one contracts with reference to such power, he has no vested right to have the rate of assessment remain the same as it was when he became a member or to receive the same benefits as were agreed upon at that time; and that under such reservations of power to amend the association has a right to make any reasonable change in its by-laws and constitution even though the rate of assessment or the benefits are materially altered. These courts hold that any change in the rate of assessment or the benefits to be received when necessary to preserve the life of the association is a reas-

onable change and comes within the reservation of the power. This view is supported in *Reynolds* v. *Sup. Council,* 192 Mass. 150, 78 N. E. 129; *Fullenwider* v. *Sup. Council,* 180 Ill. 621, 54 N. E. 485; *Royal Arcanum* v *McKnight,* 238 Ill. 349, 87 N. E. 229; *Williams* v. *Sup. Council,* 152 Mich. 1, 115 N. W. 1060; *Supreme Ruling* v. *Ericson.* Tex. Civ. App., 131 S. W. 92.

The contrary view was taken in the recent case of *Smythe* v. *Sup. Lodge K. P.,* 198 Fed. 967. In this case plaintiff held a certificate of membership which provided that "in consideration of the payment hereafter to said endowment rank of all assessments as required, and the full compliance with all the laws governing this rank now in force, or that may hereafter be enacted," etc. The plaintiff's application, which was made part of the contract, specified the rate of assessment or premium to be paid by the plaintiff. Some years later the association increased the assessment and gave notice to the plaintiff to this effect. Plaintiff brought suit in equity to restrain defendant from cancelling his policy on which he had paid assesments for many years, and to compel defendant to restore the assessment as provided at the time the policy was issued. The court held that under a general provision in the constitution and by-laws of a fraternal order, which insures the lives of its members, to amend the constitution and by-laws cannot be so construed as to authorize amendments which materially increase the premiums or assessments where no power to increase such rate is specifically reserved in the contract.

This view represents the weight of authority. One must keep in mind the provisions of the contract which as in this case called for the payment of a certain specified amount in monthly payments and which contract entitled plaintiff eventually to certain specified benefits; also the fact that reservation of the right to amend was a general power to amend. It is clear that if the contract does not specify the payment of a specific amount nor specifically state the benefits a member is to receive, such member has no vested right to have the rates or the benefits remain the same. The courts agreeing with the view of the principal case hold that the parties are bound by their contract, and where a member accepts a benefit certificate subject to the right of the association to amend its constitution and by-laws, the contract (so far as it consists of the constitution and by-laws) may be changed by amendment. But insofar as it consists in something specifically agreed upon between the parties at the time and not necessarily part of the constitution and by-laws, an amendment altering the contract is invalid. In *O'Neil* v. *Sup. Council,* 70 N. J. L. 410, 57 Atl. 463, the court says such a right to amend must be construed as referring only to a reasonable by-law and amendments adopted in furtherance of the contract and not to such as would overthrow it or materially alter its terms. In *Rockwell* v. *Knights &c Association,* 134 App. Div. 736, 119 N. Y. Supp. 515, KELLOGG, J., giving the opinion of the court and citing *Ayers* v. *Order of United Workmen,* 188 N. Y. 280, 80 N. E. 1020, said, "It is repugnant to the idea of a contract that one of the parties may, at his election, from time to time change the amounts which he is to receive from the other party under the contract, and the consideration which he is to render to the other contracting party, and, if it is possible to make such contract,

the language must permit no other construction. * * * * * But every contract has at least two parties who stand as separate entities; each dealing with the other at arm's length. The fact that one of the contracting parties is a stockholder or a member of the corporation does not permit the corporation, by an alleged change of its by-laws, to alter the terms or effect of contracts which it has already made. The fact that a contract proves unprofitable or will bring ruin upon one of the contracting parties, is no reason why the courts can permit the party who has made such an unwise contract to change its terms at will, and make for itself a more profitable contract. A member of a co-partnership who purchases property of the firm in good faith cannot be required to pay a greater consideration than that agreed upon, for the reason that the contract is unprofitable to the firm and that he is a member of the firm and is interested in its welfare."

In *Wright* v. *Knights of Maccabees,* 196 N. Y. 391, 89 N. E. 1078, 31 L. R. A. (N. S.) 423, 134 Am. St. Rep. 838, the defendant had reserved a general power to amend its by-laws similar to the provisions in the principal case, and VANN, J. in giving the opinion of the court said, "While the defendant may doubtless so amend its by-laws, for instance, as to make reasonable changes in the methods of administration, the manner of conducting its business and the like, no change can be made which will deprive a member of a substantial right conferred expressly or impliedly by the contract itself. That is beyond the power of the legislature as well as of the association, for the obligation of every contract is protected from State interference by the Federal constitution."

In the principal case the court refuses to follow the decision of the Circuit Court of Appeals for the Eighth Circuit in *Supreme Lodge* v. *Light,* 195 Fed. 903, and disapproves of the reasoning by the court in that case. The court also distinguishes the principal case from *Wright* v. *Minnesota Mutual Life Insurance Co.,* 193 U. S. 657, 24 Sup. Ct. 549. There all the rights of the old members were preserved. To the same effect is *Polk* v. *Mutual Reserve Fund Life Association,* 207 U. S. 310, 29 Sup. Ct. 56. Here also the court held that the association was bound to perform the existing obligations.

RAY, D. J. in the principal case in concluding his opinion says, "I cannot assent to the proposition that for the reason an insured member of one of these fraternal beneficial associations occupies the dual position of insurer and insured, it is said, but incorrectly, he is therefore under an obligation and impliedly promises to provide means for making all contracts good. If we adopt this contention and carry it to its legitimate conclusion, the government of a State, or of the United States, may for the general good of all its people, when in its judgment necessary, change its contract with the citizen so as to impose on him onerous pecuniary obligations he never undertook to perform. He is bound to do what he promised to do in his contract with the government, but no more, and the government has no right to claim or prescribe changes in his contract through its legislative or judicial departments. Should a clause be inserted in the contract whereby the citizen, a party to such a contract with the government, should in general terms agree to be bound by all the laws of the United States then in force or that might thereafter be

enacted, would he be held to consent thereby to a change in the terms of his contract with the government made by some special act of Congress I think such a construction would be unreasonable, oppressive, and unconstitutional. * * * * I dissent entirely from all the cases holding that the terms and obligations of a contract of insurance between one of these fraternal corporations and one of its members may be in any manner changed by amendment to its constitution or by-laws, unless the power is specified in and granted by the law creating the corporation, under a general consent in the contract to be bound by all by-laws then in existence or that may thereafter be adopted."

Besides the cases cited *supra,* the view of the principal case is supported by *Wilcox* v. *Ct. of Honor,* 134 Mo. App. 547, 114 S. W. 1155; *Supreme Council* v. *Jordan,* 117 Ga. 808, 45 S. E. 33; *Gaunt* v. *Supreme Council,* 107 Tenn. 603, 64 S. W. 1070, 55 L. R. A. 465; *Fort* v. *Iowa Legion of Honor,* 146 Iowa 183, 123 N. W. 224; *Council of Honor* v. *Rauch* — Ind. —, 95 N. E. 1018; *Hale* v. *Equitable Aid Union,* 168 Pa. 377, 31 Atl. 1066; *Olson* v. *Ct. of Honor,* 100 Minn. 117, 110 N. W. 374; *Strauss* v. *Mutual Reserve Ass'n.,* 128 N. C. 465, 39 S. E. 55. W. T. H.